

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

JOAQUIN GARCIA,

Petitioner.

CASE NO. C18-1663-BJR-MAT

V.

REPORT AND RECOMMENDATION

STATE OF WASHINGTON,

Respondent.

15 Petitioner, proceeding *pro se* and *in forma pauperis*, submitted a document entitled
16 “American with Disabilities Act of 1990 Petition for Writ of Habeas Corpus and Motion for
17 Appointment of Counsel Pursuant to 42 USCA § 10841.” (Dkt. 1.) The Court construed this
18 document as a 28 U.S.C. § 2254 habeas corpus petition. On December 14, 2018, the Court issued
19 an Order declining to serve the petition, granting leave to amend, and denying the motion for
20 appointment of counsel. (Dkt. 9.) As described below, the Court found the petition deficient in a
21 number of respects.

22 Petitioner seeks to pursue both habeas relief and claims under the Americans with
23 Disabilities Act (ADA). His request for habeas relief challenges a conviction for unlawful

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1 possession of a firearm. His ADA allegations include, *inter alia*, the failure of King County
2 Correctional Facility to provide him with requested access to services or assistance with his mental
3 disabilities and challenges to his classification status during his confinement. Because the ADA
4 allegations do not lie at the core of habeas corpus by challenging the validity or duration of
5 petitioner's confinement, they may not be pursued in a habeas action. *See Nettles v. Grounds*, 830
6 F.3d 922, 927, 931 (9th Cir. 2016) (prisoners have ““two main avenues”” of relief under federal
7 law for complaints relating to their imprisonment: a petition for writ of habeas corpus and a civil
8 rights complaint under 42 U.S.C. § 1983; a habeas corpus petition “is the exclusive vehicle for
9 claims brought by state prisoners that fall within the core of habeas[,]” and a § 1983 action is “the
10 exclusive vehicle for claims brought by state prisoners that are not within the core of habeas
11 corpus.”; “[I]f a state prisoner’s claim does not lie at ‘the core of habeas corpus,’ it may not be
12 brought in habeas corpus but must be brought, ‘if at all,’ under § 1983.”) (quoted and cited sources
13 omitted); *Preiser v. Rodriguez*, 411 U.S. 475, 484, 490, 499 (1973) (habeas corpus is designed to
14 “secure release from illegal custody” and “is the appropriate remedy for state prisoners attacking
15 the validity of the fact or length of their confinement[.]”); section 1983 provides a remedy for a
16 state prisoner “making a constitutional challenge to the conditions of his prison life, but not the
17 fact or length of his custody.”); and *Bogovich v. Sandoval*, 189 F.3d 999, 1002 (9th Cir. 1999)
18 (“There is no reason to believe that ADA claims should be treated any differently than § 1983
19 claims when examining whether a prisoner’s case should have been brought under habeas
20 corpus.”; “Regardless of the type of claim asserted, the traditional purposes of habeas corpus must
21 be preserved.”)

22 The Court advised petitioner that, assuming he intended to continue to pursue habeas relief,
23 he must submit an amended petition including only claims relating to the fact or duration of his

1 confinement. If petitioner also sought to pursue non-habeas claims, he could elect to file a separate
2 civil action.

3 The Court also advised as to a number of other deficiencies. Petitioner failed to use or
4 substantially follow this district's § 2254 form, or provide all information required by the form, as
5 is required by Local Civil Rule 100(a). Petitioner failed to name the state officer having custody
6 of him as the respondent to the petition, and therefore deprived the court of personal jurisdiction.

7 *Rumsfeld v. Padilla*, 542 U.S. 426, 434-35 (2004); *Stanley v. California Supreme Court*, 21 F.3d
8 359, 360 (9th Cir. 1994). While federal habeas corpus relief is available only to a person "in
9 custody in violation of the Constitution or laws or treaties of the United States[,"] 28 U.S.C. §
10 2254(a), and is not available for errors of state law, *Estelle v. McGuire*, 502 U.S. 62, 67-68 (1991),
11 it was not apparent whether petitioner raised any constitutional claims. Both his petition and the
12 state appellate court decisions he identified within the proposed petition appear to address solely
13 state law violations. (See Dkt. 1); *State v. Garcia*, 198 Wn. App. 527, 393 P.3d 1243 (Wash. App.
14 2017), *aff'd*, 420 P.3d 1077, 191 Wn.2d 96 (Wash. 2018). Finally, it was not clear petitioner had
15 exhausted any federal constitutional claims, including the pursuit of collateral relief at the state
16 court level by filing a personal restraint petition. See 28 U.S.C. § 2254(b)(1)(A) ("An application
17 for a writ of habeas corpus on behalf of a person in custody pursuant to the judgment of a State
18 court shall not be granted unless it appears that . . . the applicant has exhausted the remedies
19 available in the courts of the State."); *O'Sullivan v. Boerckel*, 526 U.S. 838, 845 (1999) (exhaustion
20 requirement "is designed to give the state courts a full and fair opportunity to resolve federal
21 constitutional claims before those claims are presented to the federal courts," and requires "state
22 prisoners [to] give the state courts one full opportunity to resolve any constitutional issues by
23 invoking one complete round of the State's established appellate review process."); and *James v.*

1 *Borg*, 24 F.3d 20, 24 (9th Cir. 1994) (a complete round of the state's established review process
 2 includes presentation of a petitioner's claims to the state's highest court).¹

3 The Court advised petitioner that, if he submitted an amended habeas petition, he must
 4 provide the requested clarification and otherwise remedy the deficiencies identified. The Court
 5 granted petitioner thirty days to submit an amended petition and noted that, if he failed to do so,
 6 the petition would be subject to dismissal.

7 On January 25, 2019, the Court received a document responding to its Order. (Dkt. 10.)
 8 The document does not, however, remedy any of the deficiencies identified by the Court. It
 9 appears, for example, that petitioner continues to seek to pursue both habeas relief and relief under
 10 the ADA in this action. He did not submit an amended petition on the Court's form, or provide all
 11 of the information required by the form, and continues to name only the State of Washington as
 12 respondent. It remains unclear whether petitioner alleges federal constitutional claims that may
 13 be pursued in a habeas action or whether he has exhausted any such claims. While he identified
 14 obstacles to submitting the proper form, including injuries sustained and other issues associated
 15 with his confinement, his failure to submit an amended petition has now continued well beyond
 16 the original thirty days provided and well after his submission of a responsive document.

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¹ To the extent petitioner filed a federal habeas petition prematurely, it would be subject to dismissal without prejudice to re-filing once all state court post-conviction challenges to petitioner's conviction have been completed. *See* 28 U.S.C. § 2254(b)-(c); *Rose v. Lundy*, 455 U.S. 509, 522 (1982) (holding every claim raised in federal habeas petition must be exhausted). Pursuant to 28 U.S.C. § 2244(d)(1), a one-year statute of limitations applies to § 2254 habeas actions. That period of limitation typically commences from "the date on which the judgment became final by the conclusion of direct review or the expiration of the time for seeking such review[.]" § 2244(d)(1)(A). The period of direct review ordinarily includes the ninety-day period in which a petitioner may file a petition for writ of certiorari with the United States Supreme Court, whether or not the petitioner actually files such a petition. *See Bowen v. Roe*, 188 F.3d 1157, 1159 (9th Cir. 1999); *see also* Sup. Ct. Rule 13(1). However, the one-year limitations period for filing a § 2254 action is tolled for any "properly filed" collateral state challenge to the pertinent judgment or claim. § 2244(d)(2).

1 In sum, and for the reasons set forth above, the proposed petition for habeas relief is
2 deficient and subject to dismissal. The Court recommends the habeas petition be DENIED and
3 this case DISMISSED. The dismissal should be without prejudice to petitioner filing a habeas
4 petition curing the above-described deficiencies and/or a separate civil action. A proposed Order
5 accompanies this Report and Recommendation.

6 OBJECTIONS

7 Objections to this Report and Recommendation, if any, should be filed with the Clerk and
8 served upon all parties to this suit within **twenty-one (21) days** of the date on which this Report
9 and Recommendation is signed. Failure to file objections within the specified time may affect
10 your right to appeal. Objections should be noted for consideration on the District Judge's motions
11 calendar for the third Friday after they are filed. Responses to objections may be filed within
12 **fourteen (14) days** after service of objections. If no timely objections are filed, the matter will be
13 ready for consideration by the District Judge on **March 15, 2019**.

14 DATED this 19th day of February, 2019.

15 
16 Mary Alice Theiler
17 United States Magistrate Judge